

**UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT**

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No: 16-3328

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Southern Bakeries, LLC

Petitioner

v.

National Labor Relations Board

Respondent

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John Hankins

Amicus on Behalf of Petitioner

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No: 16-3509

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Southern Bakeries, LLC

Respondent

v.

National Labor Relations Board

Petitioner

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John Hankins

Amicus on Behalf of Respondent

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Appeal from National Labor Relations Board  
(15-CA-101311)  
(15-CA-103186)  
(15-CA-104063)  
(15-CA-106033)

(15-CA-107597)  
(15-CA-108613)  
(15-CA-109746)  
(15-CA-109753)  
(15-CA-109755)  
(15-CA-115945)  
(26-CA-077268)  
(26-CA-077536)  
(15-CA-101311)  
(15-CA-103186)  
(15-CA-104063)  
(15-CA-10633)  
(15-CA-107597)  
(15-CA-108613)  
(15-CA-109746)  
(15-CA-109753)  
(15-CA-109755)  
(15-CA-115945)  
(26-CA-077268)  
(26-CA-077536)

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## **JUDGMENT**

Before GRUENDER, MURPHY and KELLY, Circuit Judges.

This cause was submitted on petition for review of a final order from the National Labor Relations Board and cross-application by the National Labor Relations Board for enforcement. The cases were submitted on the original record, briefs of the parties and were argued by counsel.

After consideration, it is hereby ordered and adjudged that the order of the National Labor Relations Board be enforced in part and denied in part in accordance with the opinion of this Court, dated September 27, 2017. Petitioner/Cross-Respondent Southern Bakeries, LLC, is hereby ordered to abide by the National Labor Relations Board's proposed judgment which is adopted as the court's judgment.

October 30, 2017

Order Entered in Accordance with Opinion:  
Clerk, U.S. Court of Appeals, Eighth Circuit.

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/s/ Michael E. Gans

UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT

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|--------------------------------|---|-----------------------|
| SOUTHERN BAKERIES, LLC         | ) |                       |
|                                | ) |                       |
| Petitioner/Cross-Respondent    | ) |                       |
|                                | ) |                       |
| v.                             | ) | Nos. 16-3328, 16-3509 |
|                                | ) |                       |
| NATIONAL LABOR RELATIONS BOARD | ) |                       |
|                                | ) |                       |
| Respondent/Cross-Petitioner    | ) |                       |

JUDGMENT

Before: GRUENDER, MURPHY, and KELLY, *Circuit Judges*.

THIS CAUSE came to be heard upon a petition filed by Southern Bakeries, LLC to review an Order of the National Labor Relations Board dated August 4, 2016, in Case Nos. 15-CA-101311, 15-CA-103186, 15-CA-104063, 15-CA-106033, 15-CA-107597, 15-CA-108613, 15-CA-109746, 15-CA-109753, 15-CA-109755, 15-CA-115945, 26-CA-077268, and 26-CA-077536, reported at 364 NLRB No. 64, and upon a cross-application for enforcement filed by the National Labor Relations Board to enforce said Order. The Court heard argument of the parties and has considered the briefs and agency record filed in this cause. On September 27, 2017, the Court, being fully advised in the premises, handed down its opinion granting in part the petition of Southern Bakeries, LLC and granting in part the Board's cross-petition for enforcement. In conformity therewith, it is hereby

ORDERED AND ADJUDGED by the Court that Southern Bakeries, LLC, Hope, Arkansas, its officers, agents, successors, and assigns, shall abide by the following attached order.

October 30, 2017

Order Entered in Accordance with Opinion:  
Clerk, U.S. Court of Appeals, Eighth Circuit.

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/s/ Michael E. Gans

## SOUTHERN BAKERIES, LLC

v.

## NATIONAL LABOR RELATIONS BOARD

Southern Bakeries, LLC, Hope, Arkansas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

- (a) Threatening employees with closure of the facility if they engage in activities on behalf of Bakery, Confectionery, Tobacco and Grain Millers Union, Local 111 (the Union) or other protected concerted activities.
- (b) Coercively interrogating employees about their union or other protected concerted activities.
- (c) Creating the impression that it is engaged in surveillance of its employees' union or other protected concerted activities.
- (d) Promising employees improved wages and other unspecified benefits, in order to discourage them from retaining the Union as their collective-bargaining representative.
- (e) Disparaging the Union in order to discourage employees from retaining the Union as their collective-bargaining representative.
- (f) Orally promulgating and maintaining an overly broad rule in response to union activity instructing employees to report harassment and threats on any basis during the election campaign, regardless of whether they were for or against the Union.
- (g) Commencing disciplinary investigations against, issuing written warnings and personnel file documentations to, and suspending employees because of their support for and activities on behalf of the Union.
- (h) Withdrawing recognition from the Union and failing and refusing to bargain with the Union as the exclusive collective-bargaining representative of unit employees.
- (i) Unilaterally granting a wage increase to its unit employees, without

providing the Union notice and an opportunity to bargain.

- (j) Unilaterally implementing new rules regarding the Union's access to unit employees at the plant, and barring the Union from entering the plant, without first notifying the Union and giving it an opportunity to bargain.
  - (k) Unilaterally installing surveillance cameras in the break area, without first notifying the Union and giving it an opportunity to bargain.
  - (l) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time production and sanitation employees employed by the Company at its Hope, Arkansas plant, excluding all other employees, including temporary and seasonal employees as defined in the parties' expired collective-bargaining agreement, office clerical employees, professional employees, guards and supervisors as defined by the Act.
  - (b) On request by the Union, rescind the wage increase to bargaining unit employees that was implemented in September 2013, and bargain with the Union before implementing future wage and benefit increases for unit employees, provided, however, that nothing in this Order shall be construed as requiring or authorizing the Respondent to cancel any unilateral change that benefited the unit employees unless the Union requests such action.
  - (c) Restore the plant access policy, including the windowed wall that divided the break area, which was in effect prior to March 8, 2012.
  - (d) Remove the surveillance cameras that were installed in the break area, and bargain with the Union before installing such cameras in the break area in the future.
  - (e) Within 14 days from the date of this Order, rescind, in writing, the orally promulgated and maintained rule that unlawfully instructs employees to report harassment and threats on any basis during the election campaign,

regardless of whether they were for or against the Union, and, within 3 days thereafter, notify employees in writing that this rule has been rescinded.

- (f) Make Lorraine Marks whole for any loss of earnings and other benefits resulting from her suspension, in the manner set forth in the judge's decision as amended in this decision.
- (g) Compensate Lorraine Marks for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 15, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year.
- (h) Within 14 days from the date of this Order, remove from its files any reference to the unlawful disciplinary investigations of Sandra Phillips, Lorraine Marks, and Vicki Loudermilk, Marks' and Loudermilk's Personnel File Documentations, Phillips' written warning, and Marks' suspension, and, within 3 days thereafter, notify the affected employees in writing that this has been done and that the investigations, Personnel File Documentations, written warning, and suspension will not be used against them in any way.
- (i) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the backpay amounts due under the terms of this Order.
- (j) Within 14 days after service by the Region, post at its Hope, Arkansas, facility copies of the attached notice marked "Appendix" in English and Spanish. Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not

altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by it at the facility at any time since March 8, 2012.

- (k) Within 14 days after service by the Region, hold a meeting or meetings during working hours, which will be scheduled to ensure the widest possible attendance of unit employees, at which time the attached notice marked “Appendix” is to be read to the employees in English by Rickey Ledbetter (or the current executive vice president/general manager), in the presence of a Board agent, or, at the Respondent’s option, by a Board agent in that official’s presence, and shall also be read, by interpreters, in Spanish.
- (l) Within 21 days after service by the Region, file with the Regional Director for Region 15 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

## APPENDIX

### NOTICE TO EMPLOYEES

POSTED PURSUANT TO A JUDGMENT OF THE  
UNITED STATES COURT OF APPEALS ENFORCING  
AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT threaten you with closure of the facility if you engage in activities on behalf of the Bakery, Confectionery, Tobacco and Grain Millers Union, Local 111 (the Union) or other protected concerted activities.

WE WILL NOT coercively interrogate you about your union or other protected concerted activities.

WE WILL NOT create the impression that we are engaged in surveillance of your union or other protected concerted activities.

WE WILL NOT promise you improved wages and other unspecified benefits to discourage you from retaining the Union as your collective-bargaining representative.

WE WILL NOT disparage the Union to discourage you from retaining the Union as your collective-bargaining representative.

WE WILL NOT orally promulgate or maintain an overly broad rule in response to union activity that instructs employees to report harassment and threats on any basis during the election campaign, regardless of whether they were for or against the Union.

WE WILL NOT commence disciplinary investigations against, issue personnel file documentations and written warnings to, and suspend you because of your support for and activities on behalf of the Union.

WE WILL NOT withdraw recognition from the Union and fail and refuse to bargain with it as your exclusive collective-bargaining representative.

WE WILL NOT unilaterally grant a wage increase to you, without providing the



Union notice and an opportunity to bargain.

WE WILL NOT unilaterally implement new rules regarding the Union's access to unit employees at the plant or bar the Union from entering the plant, without giving the Union notice and an opportunity to bargain.

WE WILL NOT unilaterally install surveillance cameras in the break area, without first notifying the Union and giving it an opportunity to bargain.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time production and sanitation employees employed by the Company at its Hope, Arkansas plant, excluding all other employees, including temporary and seasonal employees as defined in the parties' expired collective-bargaining agreement, office clerical employees, professional employees, guards and supervisors as defined by the Act.

WE WILL, on request by the Union, rescind the wage increase that was implemented in September 2013, and bargain with the Union before implementing future wage and benefit increases for unit employees, provided, however, that nothing in the Board's Order shall be construed as requiring or authorizing us to cancel any unilateral change that benefited the unit employees unless the Union requests such action.

WE WILL restore the plant access policy, including the windowed wall that divided the break area, which was in effect prior to March 8, 2012.

WE WILL remove the surveillance cameras that were installed in the break area, and bargain with the Union before installing such cameras in the break area in the future.

WE WILL, within 14 days from the date of the Board's Order, rescind, in writing, the orally promulgated and maintained rule that unlawfully instructs employees to report harassment and threats on any basis during the election campaign, regardless of whether they were for or against the Union, and WE WILL, within 3 days thereafter, notify employees in writing that this rule has been rescinded.

WE WILL make Lorraine Marks whole for any loss of earnings and other benefits resulting from her suspension, less any net interim earnings, plus interest.

WE WILL compensate Lorraine Marks for the adverse tax consequences, if any,

of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 15, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful disciplinary investigations of Sandra Phillips, Lorraine Marks, and Vicki Loudermilk, Marks' and Loudermilk's personnel file documentations, Phillips' written warning, and Marks' suspension, and WE WILL, within 3 days thereafter, notify the affected employees in writing that this has been done and that the investigations, personnel file documentations, written warning, and suspension will not be used against them in any way.

WE WILL hold a meeting or meetings during working hours and have this notice read to you and your fellow workers by Rickey Ledbetter (or the current executive vice president/general manager), in the presence of a Board agent, or by a Board agent in the presence of that official.

### SOUTHERN BAKERIES, LLC

The Board's decision can be found at [www.nlrb.gov/case/15-CA-101311](http://www.nlrb.gov/case/15-CA-101311) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

